

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID FEIGE, On Behalf of Himself and All  
Other Persons Similarly Situated :

Plaintiff, :

-against- :

RCN CORPORATION, :

Defendant. :

**ORDER REGULATING  
PROCEEDINGS**

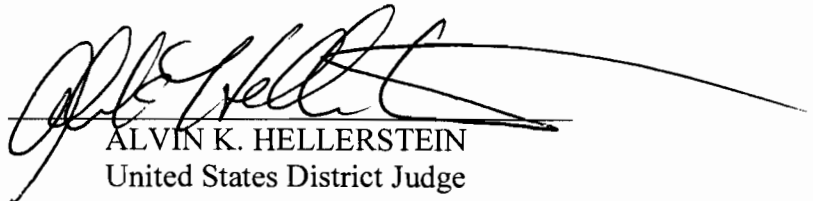
07 Civ. 8539 (AKH)

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ALVIN K. HELLERSTEIN, U.S.D.J.:

Notwithstanding my endorsed order of April 11, 2008, plaintiff may move for reconsideration. Any such motion must be made by April 30, 2008. The motion should address only whether, in light of the first cause of action, which alleges a claim under 47 U.S.C. § 201(b), a claim under GBL § 349 serves any purpose and whether the allegations against defendant, as outlined in Count II of the Complaint, constitute deception by the plaintiff, and are not merely illegal for some other reason. If it is alleged that there is a purpose for a § 349 claim, in addition to the 47 U.S.C. § 201(b) claim, plaintiff shall specify the particular deceptive conduct complained of on the part of defendant. Plaintiff should further note that any further briefing on the intent to deceive point is unnecessary since my April 11, 2008 endorsement found that plaintiff's GBL § 349 claim failed to meet one of the required elements of such a claim under New York law – specifically any legitimate allegation that defendant's conduct was misleading in a material way.

SO ORDERED.

Dated: April 16, 2008  
New York, New York

  
ALVIN K. HELLERSTEIN  
United States District Judge